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13 GOOGLE LLC

14 **UNITED STATES DISTRICT COURTS**
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 **SAN FRANCISCO**

17 ANIBAL RODRIGUEZ, *et al.* individually and
18 on behalf of all other similarly situated,

19 Case No. 3:20-CV-04688 RS

20 Plaintiffs,

21 **GOOGLE LLC'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL EXHIBIT
A TO ITS SUPPLEMENTAL LETTER
BRIEF RE: SEARCH TERMS**

22 vs
23 GOOGLE LLC, *et al.*

24 Defendant.

25 The Honorable Alex G. Tse

26 Action Filed: July 14, 2020
27 Trial Date: Not Yet Set

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5(c), Defendant Google LLC (“Google”) files
3 this administrative motion to seal Exhibit A to its Supplemental Brief Regarding Search Terms.
4 The information in this exhibit consists of non-public, competitively sensitive information that
5 discloses aspects of Google’s business structure that Google does not disclose publicly. For the
6 reasons set forth below, the Court should grant Google’s motion to seal select portions in Exhibit
7 A.

8 **II. LEGAL STANDARD**

9 The Ninth Circuit has “‘carved out an exception to the presumption of access’ to judicial
10 records . . . for a ‘sealed discovery document [attached] to a *non-dispositive* motion,’ such that ‘the
11 usual presumption of the public’s right of access is rebutted.’” *See Kamakana v. City & Cty. of
12 Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citation omitted, emph. in original). “[A]
13 ‘particularized showing,’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant
14 preserving the secrecy of sealed discovery material attached to non-dispositive motions.’” *Id.* at
15 1180 (citation omitted). Such a showing may include evidence that the moving party “has
16 considered and treated the information contained in the subject documents as confidential,
17 commercially sensitive and proprietary, and that public disclosure of such information would
18 create a risk of significant competitive injury and particularized harm and prejudice to [it]” *See*
19 Oracle USA, Inc. v. SAP AG, 2009 U.S. Dist. LEXIS 71365, at *4-5 (N.D. Cal. 2009).

20 **III. ARGUMENT**

21 Google seeks to seal the unique document hit count numbers and subtotals that correspond
22 to each search term in **Exhibit A**. Google has demonstrated “good cause” to permit filing these
23 select portions under seal for the reasons specifically stated in Steve Ganem’s Declaration
24 (“Ganem Decl.”) filed in support of Plaintiffs’ Adminisitrative Motion to Seal (Re: Joint Search
25 Term Letter Brief) (ECF No. 207), and elaborated below. As described in Mr. Ganem’s
26 declaration, the correlation of hit counts, search terms, and custodians discloses confidential and
27 proprietary aspects of Google’s business structure, resource allocation, and strategy that Google
28 does not discuss publicly. Ganem Decl. at ¶ 6. Understanding Google’s internal resource

1 allocation and prioritization would allow a competitor to unfairly target Google's business by
2 optimizing their product strategy and offerings or undermining Google's. *Id.*

3 Courts have repeatedly found it appropriate to seal documents that contain "business
4 information that might harm a litigant's competitive standing, *Nixon v. Warner Commc'ns, Inc.*,
5 435 U.S. 589, 589-99 (1978), or any other "commercially sensitive information," *Palantir Techs.
Inc. v. Abramowitz*, No. 19-CV-06879-BLF, 2021 WL 1925459, at *2 (N.D. Cal. Mar. 5, 2021).
6 Good cause to seal is shown when a party seeks to seal materials that "contain[] confidential
7 information about the operation of [the party's] products and that public disclosure could harm
8 [the party] by disclosing confidential technical information." *Digital Reg. of Texas, LLC v. Adobe
9 Sys., Inc.*, No. C 12-1971 CW, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Publicly
10 disclosing the information Google seeks to keep under seal would harm Google's competitive
11 standing, which it has earned through years of innovation and careful deliberation, by revealing
12 sensitive aspects of Google's proprietary systems, strategies, and designs to Google's competitors.
13 That alone is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v.
14 Google Inc.*, No. 14-cv-02329-BLF, ECF No. 192, at 6–8 (N.D. Cal. May 3, 2017) (granting
15 Google's motion to seal certain sensitive business information).

17 Additionally, if the unique hit count numbers become public, Google is likely to be
18 prejudiced because other litigants adverse to Google will use the information to gain an unfair
19 advantage over Google in search term negotiations in those unrelated matters. This is not a
20 speculative threat. In fact, at least one other plaintiff in an unrelated matter has sought cloned
21 discovery from this litigation and these Plaintiffs have sought discovery from another matter.
22 That cross-sharing of information to gain litigation advantage is not the type of "public interest"
23 courts had in mind when articulating the requirement that there be "good cause" to seal material
24 concerning non-dispositive matters. On the contrary, courts are concerned with the public's
25 interest in "understanding the judicial process." *Kamakana*, 447 F.3d at 1178. Sealing the unique
26 hit counts will not hinder the public's understanding of the dispute at issue particularly because
27 Google is not seeking to seal the overall total hit counts for both parties' respective proposals. If
28 information such as unique per term hit counts were routinely made public, that would chill future

1 litigants' willingness to freely negotiate search terms for fear that specific hit counts will
2 eventually be used against the party in unrelated litigation.

3 Lastly, Google has narrowly tailored its request to seal only extraneous, confidential,
4 proprietary material that is not necessary to aid the public's understanding of the content at issue
5 in this discovery briefing, and that is therefore unnecessary to subject to the presumption of public
6 access.

7 **IV. CONCLUSION**

8 For the reasons set forth above, Google respectfully requests that the Court Grant its Motion
9 to Seal in its entirety.

10 Dated: January 28, 2022

Respectfully submitted,

11 WILLKIE FARR & GALLAGHER LLP

12 By: /s/ Eduardo E. Santacana
13 Eduardo E. Santacana